1236.

SUPREME COURT OF THE UNITED STATES.

No. 119.

WILLIAM T. PEASE, (IMPLEADED WITH JOHN CHESTER AND TARLETON JONES,) PL'FF IN ERROR.

vs.

WM. DWIGHT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR MICHIGAN.

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J. & G. S. Gideon, printers.

WILLIAM DWIGHT,
vs.
WILLIAM T. PEASE, JOHN CHESTER, and TARLTON JONES.

Pleas before the judges of the circuit court of the United States, for the seventh circuit and district of Michigan, at the district court room in the city of Detroit, in said district, of the term of October, in the year of our Lord one thousand eight hundred and forty-five.

DISTRICT OF MICHIGAN, *to wit:*

William Dwight, plaintiff, puts in his place Joy and Porter, as his attorneys, against William T. Pease, John Chester, and Tarlton Jones, defendants in a plea of trespass on the case upon promises.

DISTRICT OF MICHIGAN, *to wit:*

The defendant William T. Pease puts in his place George C. Bates, and the defendant John Chester puts in his place Lewis Allen, as their attorneys, at the suit of the said William Dwight, plaintiff in the plea aforesaid.

According to the form of the statute in such case made and provided, a certain writ of summons issued out of and under the seal of the said circuit court of the United States, for the seventh circuit and district of Michigan, at the suit of the said William Dwight against the said William T. Pease, John Chester, and Tarlton Jones, of a plea of trespass on the case upon promises, (which writ of summons is in the words and figures following, that is to say:)

Summons.

The President of the United States of America, to the marshal of the district of Michigan, greeting:

You are hereby commanded that you summon William T. Pease, John Chester, and Tarlton Jones, if they shall be found in your district, to be and appear in the circuit court of the United States of America for the district of Michigan, to be held [L. S.] at Detroit, in said district, before the judges of said court, on the first Monday of May next, to answer unto William Dwight in a plea of trespass on the case upon promises, to his damage three thousand dollars; which shall then and there be made to appear. And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of April, in the year of our Lord one thousand eight hundred and forty-four, and of our independence the sixty-eighth.

(Signed,) JNO. WINDER, *Clerk*.

To which said writ of summons the marshal of said district of Michigan, to wit, Joshua Howard, made return thereof to said court, on the

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day therein mentioned for the return of the same, in the words and figures following, that is to say:

Service of summons.

DISTRICT OF MICHIGAN, DETROIT, 18*th April*, 1844.

I have this day served the within writ upon the within named William T. Pease and John Chester, by personally delivering to each a copy hereof; and the within named Tarlton Jones is not found in my district.

(Signed,) JOSHUA HOWARD, *U. S. Marshal.*

And thereupon said plaintiff, by his attorneys aforesaid, on the seventh day of May, in the year of our Lord one thousand eight hundred and forty-four, brought into the said court before the judges thereof then there, his certain declarations against the said defendants William T. Pease, John Chester, and Tarleton Jones, in the words and figures following, that is to say:

Narr.

DISTRICT OF MICHIGAN, *ss:*

William Dwight, who is a citizen of Massachusetts, plaintiff in this suit, by Joy and Porter, his attorneys, complains of William T. Pease, John Chester, and Tarlton Jones, defendants in this suit, in a plea of trespass on the case upon promises; and which said Pease and Chester have been duly summoned, and are citizens of the State of Michigan, and which said Jones is a citizen of the State of Illinois, and as to whom the marshal has returned upon the summons that he has not been found in his State.

For that whereas, one John Chester heretofore, to wit, on the first day of January, in the year eighteen hundred and thirty-seven, at Detroit, in the said district, made his certain promissory note in writing, bearing date the same day and year aforesaid; and thereby then and there promised, two years from the date thereof, to pay to the order of Walter Chester, and certain persons using the name and style of Pease, Chester & Co., one thousand and five hundred dollars, for value received, at the Farmers and Mechanics' bank of Michigan, with interest; and then and there delivered the said promissory note to the said persons, using the name and style of Pease, Chester & Co., who then and there endorsed and delivered the same to the said plaintiff. And the said plaintiff avers, that the said John Chester was one of the said persons using the name and style of Pease, Chester & Co., and that the name of the said Walter Chester was inserted in the said promissory note as one of the persons to whose order the said sum of money should be payable by the said John Chester, for the purpose and with the intention, on the part of the said John Chester, of procuring the said Walter to endorse the said note for the accommodation and benefit of the said John Chester, and for no other purpose; that the said note was never delivered to the said Walter Chester, and that the said Walter Chester never at any time had any interest, or property, or rights therein, or to the money speci-

fied and mentioned therein; that the said note was by the said John Chester delivered to the said Pease, Chester & Co., alone, who received the same and endorsed it solely, who waived the endorsement of the said Walter Chester; and having solely endorsed the same, delivered the said note, so endorsed, to the said De Garmo Jones, who then and there endorsed and delivered the same to the said plaintiff. And the said plaintiff avers, that afterwards, and when the said promissory note became due and payable according to its tenor and effect, to wit, on the fourth day of January, in the year eighteen hundred and thirty-nine, at the said Farmers and Mechanics' bank of Michigan, the said note was presented and shewn to and at the said bank for the payment thereof; and payment of the said sum of money therein specified was then and there duly requested; but that neither the said John Chester, nor any other person, did or would pay the said sum of money therein specified, but then and there wholly neglected and refused so to do; of all which said several premises the said defendants had notice.

Also, for that whereas the said defendants, heretofore, to wit, on the said first day of January, in the year eighteen hundredand thirty-seven, at Detroit, in the said district, made their certain promissory note in writing, and thereby then and there promised, two years from the date thereof, to pay to the order of De Garmo Jones the sum of fifteen hundred dollars, for value received; and then and there delivered the said promissory note to the said Jones, who then and there endorsed and delivered the same to the said plaintiff. Yet the said defendants, although often requested, have not paid the said several sums of money, or any part thereof, but to pay the same have hitherto wholly refused, and still do refuse, to the damage of the said plaintiff three thousand dollars; and therefore he brings suit, &c., by

(Signed,) JOY & PORTER, *his Attorneys*.

Plea of Chester.

And hereupon, to wit, on the seventh day of June, in the year of our Lord one thousand eight hundred and forty-four, the said defendant, John Chester, impleaded as aforesaid with William T. Pease and Tarleton Jones, by Lewis Allen, his attorney, comes and defends the wrong and injury, when, &c., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that after the making of the said several supposed promises and undertakings, and accruing of the said several causes of action in the said declaration mentioned, if any such were made, or have accrued, and before the commencement of this suit, to wit, on the twentieth day of September, in the year one thousand eight hundred and forty-two, the said defendant (impleaded as aforesaid) at the city of Detroit, in the district aforesaid, presented his petition in bankruptcy, in due form of law, to the honorable district judge of the United States for the district of Michigan, duly verified according to law, praying that by a decree of the said district court he might be decreed a bankrupt according to the provisions of the act of Congress in such case made and pro-

vided; and that such further order and proceedings might be taken as are provided for, directed, or required in and by the said act of Congress. And this defendant avers, that at the time of filing the said petition, to wit, on the day and year last aforesaid, he was a resident of the said district of Michigan. And this defendant further avers, that such proceedings were had upon said petition, in and by the said district court, that afterwards, to wit, on the seventeenth day of October, in the year one thousand eight hundred and forty-two, at the place last aforesaid, this defendant was duly declared a bankrupt. And this defendant further avers, that such further proceedings were afterwards had in said district court in the matter of said petition, to wit, on the third day of April, in the year one thousand eight hundred and forty-three, at the city of Detroit aforesaid, that the said defendant was, by the order and decree of the said district court, fully discharged of and from all his debts owing by him individually, and as a member of the late firm of Pease, Chester and company, at the time of the presentation of his petition aforesaid, and which were proveable against the estate of this defendant, to wit, at the day and in the place last aforesaid, and that the said district court did then and there duly grant unto this defendant a certificate of his said discharge. And this defendant further avers, that under the act of Congress in such case made and provided, the said causes of action set forth in the plaintiff's declaration were, and each and every of them was provable against the estate of this defendant, as a bankrupt as aforesaid, to wit, at Detroit aforesaid, and on the day last aforesaid. Whereupon this defendant says, that the said causes of action, and each and every of them, set forth in the said plaintiff's declaration, are barred by the said discharge and certificate; and this he is ready to verify. Wherefore, he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

(Signed) LEWIS ALLEN,
Attorney for deft. Chester.

Demurrer to plea of Chester.

And thereupon the said plaintiff, by his attorney aforesaid, on the twenty-second day of June, in the year of our Lord one thousand eight hundred and forty-four, comes into the court aforesaid, before the judges thereof, and files his demurrer to the plea of the said defendant, John Chester, in the words and figures following, that is to say: And the said plaintiff, as to the said plea of the said defendant by him above pleaded, saith that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficent in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same. And this he, the said plaintiff, is ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment, and his damages by the reason of not performing

of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, &c., &c.

(Signed) JOY & PORTER,
Attorneys for plaintiff.

Special demurrer of Pease to plaintiff's narr.

And thereupon, to wit, on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and forty-four, the said defendant, William T. Pease, impleaded as aforesaid with John Chester and Tarlton Jones, by his attorney aforesaid, comes into the court aforesaid, and files his special demurrer to the declaration of the said plaintiff William Dwight, in the words and figures following, that is to say:

DISTRICT OF MICHIGAN, *ss.*

And the said defendant, by George C. Bates, his attorney, comes and defends the wrong and injury, when, &c., and says that the said declaration and the matters therein contained, in manner and form as the same are in said declaration mentioned, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against him, this defendant; and that he, the said defendant, is not bound by law to answer the same; and this he is ready to verify. Wherefore, for want of a sufficient declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him. And the said defendant, according to the form of the statute and the rules of said court, states and shows the following causes of demurrer to said declaration, viz:

First. That the citizenship of De Garmo Jones, one of the endorsers of said promissory note described in said declaration mentioned, is not set forth or described in said declaration.

Second. That said declaration is in other respects manifestly informal, bad, and insufficient.

(Signed) GEORGE C. BATES,
Defendants' attorney.

Amended narr.

And thereupon, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and forty-five, the said plaintiff, William Dwight, by his attorney aforesaid, comes into the court aforesaid, before the judges thereof, in pursuance of the statute and the rules of said court, and files his amended declaration against the said defendants, William T. Pease, John Chester, and Tarlton Jones, in the words and figures following, that is to say:

DISTRICT OF MICHIGAN, *ss.*

William Dwight, who is a citizen of the State of Massachusetts, plaintiff in this suit, by Joy and Porter, his attorneys, complains of William T. Pease, John Chester, and Tarlton Jones, defendants in this suit, in a plea of trespass on the case on promises, &c., which said

Pease and Chester have been duly summoned, and are citizens of the State of Michigan, and which said Jones is a citizen of the State of Illinois, and as to whom the marshal has returned upon the summons that he has not been found. For that whereas, one John Chester heretofore, to wit, on the first day of January, in the year eighteen hundred and thirty-seven, at Detroit, in said district, made his certain promissory note in writing, bearing date the same day and year aforesaid; and thereby then and there promised, two years from the date thereof, to pay to the order of Walter Chester, and the said defendants, under the copartnership name and style of these said defendants, Pease, Chester & Co., one thousand five hundred dollars, for value received, at the Farmers and Mechanics' Bank of Michigan, with interest; and then and there delivered the said promissory note to the defendants, who then and there, using their copartnership name and style of Pease, Chester & Co., endorsed said note, and delivered the same to the plaintiff.

And the said plaintiff avers, that the said John Chester was one of the said persons using the name and style of Pease, Chester & Co., and that the name of the said Walter Chester was inserted in the said promissory note as one of the persons to whose order the said sum of money should be payable, by the said John Chester, for the purpose of and with the intention, on the part of the said John Chester, of procuring the said Walter to endorse the said note, for the accommodation and benefit of the said John Chester, and for no other purpose; that the said note was never delivered to the said Walter Chester, and that the said Walter Chester never had at any time any interest, or property, or rights therein, or to the money specified and mentioned therein; that the said note was by the said John Chester delivered to the said Pease, Chester & Co. alone, who received the same and endorsed it solely, who waived the endorsement of the said Walter Chester, and having solely endorsed the same, delivered the said note so endorsed as aforesaid to the said plaintiff. And the said plaintiff avers that afterward, and when the said promissory note became due and payable according to the tenor and effect thereof, to wit, on the fourth day of January, in the year eighteen hundred and thirty-nine, at the said Farmers and Mechanics' bank of Michigan, the said note was presented and shewn to and at the said bank for the payment thereof, and payment thereof requested; but that neither the said John Chester, nor any other person, did or would pay the said sum of money therein specified, but then and there wholly neglected and refused so to do; of all which said several premises the said defendants then and there had due notice. Also, for that whereas, one John Chester heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and thirty-seven, at Detroit, in said district, made his certain other promissory note in writing, bearing date the same day and year aforesaid; and thereby then and there promised, two years from date to pay to the order of Walter Chester, and the said defendants, under the copartnership,

This count demurred to, demurrer overruled, and now taken to Supreme Court, U. S.

name and style of these defendants, Pease, Chester & Co., one thousand five hundred dollars, for value received, (meaning for value received,) at the Farmers and Mechanics' bank of Michigan, with interest; and then and there delivered the said promissory note to the said defendants, who then and there, using their copartnership name and style of Pease, Chester & Co., endorsed said note, and delivered the same to the plaintiff; and the said plaintiff avers that afterwards, and when the said note became due and payable, according to the tenor and effect thereof, to wit, on the fourth day of January, in the year eighteen hundred and thirty-nine, at the said Farmers and Mechanics' bank, the said promissory note was duly presented and shewn for the payment thereof, and payment thereof was then and there duly demanded; but that neither the said Farmers and Mechanics' bank, nor the said John Chester, did or would pay the said sum of money therein demanded, but then and there wholly neglected and refused so to do. Of all which said several premises the said defendants, afterwards, to wit, on the same day and year last aforesaid, at Detroit aforesaid, had due notice. Also, for that whereas, the said defendants heretofore, to wit, on the first day of January, in the year eighteen hundred and thirty-seven, at Detroit, in said district, made their certain promissory note in writing, and then and there promised to pay the President, Directors, and Company of the bank of Michigan, or bearer, the sum of one thousand five hundred dollars, on the first day of January, in the year one thousand eight hundred and thirty-nine, at the Farmers and Mechanics' bank of Michigan, with interest, and then and there delivered the said promissory note to the said President, Directors, and Company of the bank of Michigan, who then and there delivered the same to the plaintiff. Also, for that whereas the said defendants, heretofore, to wit, on the third day of July, in the year eighteen hundred and thirty-eight, at Detroit, in said district, made his certain other promissory note in writing, and thereby then and there promised, on the first day of January, in the year eighteen hundred and thirty-nine, to pay to the President, Directors, and Company of the bank of Michigan or bearer, the sum of one thousand five hundred dollars, at the Farmers and Mechanics' bank of Michigan, for value received, with interest; and then and there delivered the said promissory note to the said President, Directors, and Company of the bank of Michigan, who then and there delivered the same to the said plaintiffs. Yet the said defendants, though thereunto often requested, have not paid the said several sums of money in said promissory notes mentioned, or any part thereof, but to pay the same have wholly neglected and refused, and still do neglect and refuse, to the damage of the said plaintiff three thousand dollars, and therefore he brings suit, &c.

Signed, JOY & PORTER,
Plaintiff's Attorneys.

Demurrer and plea of Pease to amended narr.

And the said defendant, William T. Pease, impleaded as aforesaid, by George C. Bates, his attorney, comes and defends the wrong and

injury, when, &c., and says, that the said first and second counts of the said amended declaration, and the matters therein contained, in manner and form as the same are above stated and set forth in said first and second counts, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same; and this he is ready to verify. Wherefore, by reason of the insufficiency of the said first and second counts of said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him, the said defendant. And the said defendant, pursuant to the rules and practice of this court, states and shews the following grounds of demurrer to the said first and second counts, viz :

First. Because it is not averred in either of said first or second counts that Walter Chester, one of the joint payers of the said promissory note described in said counts, ever endorsed or delivered the same to the said plaintiff, or any other person whatever.

Second. Because in the said first count there is no averment that said promissory note was ever presented and payment thereof demanded, at the time and place when the same became due and payable.

Third. For that said first and second counts are in other respects informal, insufficient, and defective.

And as to the said third and fourth counts in the said amended declation mentioned, the said defendant saith, that he did not undertake and promise in manner and form as the said plaintiff hath in the said third and fourth counts of his said declaration above complained; and of this he puts himself upon the country, and the plaintiff doth the like.

Signed, GEO. C. BATES,
Defendant's Attorney.

Joinder in demurrer of Chester.

And the said defendant, John Chester, saith, that his said plea by him above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against him, the said defendant; and the said defendant is ready to verify and prove the same, when, where, and in such manner as the said court shall here direct and award. Wherefore, inasmuch as the said plaintiff hath not answered the said plea, nor hitherto in any manner denied the same, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action against him, the said defendant.

(Signed,) LEWIS ALLEN,
Attorney for the defendant, John Chester.

Joinder in demurrer of plaintiff.

And the said plaintiffs say, that the said first and second counts of said

declaration are sufficient for him, the said plaintiff, to have and maintain his aforesaid action thereof against said defendant; and this he is ready to verify; wherefore he prays judgment, and that his damages may be awarded to him, &c., &c.

(Signed,) JOY & PORTER,
For plaintiffs.

Judgment on demurrer.

At which day, before the judges of the said court, come as well the said plaintiff as the said defendants, by their respective attorneys aforesaid; whereupon, all and singular the premises aforesaid being seen, and by the said court here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the declaration aforesaid, and the matters therein *contained, are sufficient in law for the said plaintiff, William Dwight, to have and maintain his aforesaid action thereof against the said William T. Pease.* And issue being joined between said plaintiff and defendant, William T. Pease, upon the third and fourth counts contained in said declaration, therefore let a jury come, by whom, &c., who neither, &c., because, as well the said plaintiff, William Dwight, as the said defendant, William T. Pease, have put themselves upon that jury.

And as to the said demurrer of said plaintiff to the said plea of said defendant, John Chester, all and singular the premises being seen and by the court here fully understood, and mature deliberation being had, it appears to the said court that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said William Dwight to have and maintain his aforesaid action thereof against the said defendant, John Chester; thereupon it is considered that the said William Dwight take nothing by his said writ as against the said John Chester; and that the said John Chester do go thereof without day; and that the said John Chester do recover against the said William Dwight his costs and charges by him in his defence laid out and expended at the suit of the said William Dwight, to be taxed, &c., by the said court now here adjudged to the said John Chester, and with his assent.

And thereupon the cause was continued between the parties aforesaid until the term of October, in the year of our Lord one thousand eight hundred and forty-five.

And now, to wit, on the fifth day of November, of the term of October, in the year of our Lord one thousand eight hundred and forty-five, before the judges of the said circuit court of the United States for the seventh circuit and district of Michigan, at the city of Detroit aforesaid, come as well the said plaintiff as the said William T. Pease, by their respective attorneys aforesaid; and as to the said pleas of the said defendant, William T. Pease, by him above pleaded, as to the third and fourth counts of his said declaration, the said William Dwight saith that he will not prosecute his suit against the said defendants in respect of any of the said counts of the said declaration, except the first count thereof; therefore, as to the said promises and undertakings in the second,

third, and last counts of the said declaration, let the said defendants be acquitted, and go thereof without day.

Wherefore, the said plaintiff, William Dwight, ought to recover against the said defendant, William T. Pease, his damages on occasion of the premises, and his costs, &c.; and his damages are now here assessed by the court aforesaid at the sum of two thousand four hundred and twenty-seven dollars. Therefore, it is considered that the said William Dwight, plaintiff, do recover against the said William T. Pease, defendant, the sum of two thousand four hundred and twenty-seven dollars, his damages on occasion of the premises assessed as aforesaid, together with the further sum of fifty-four dollars and fifty-four cents, being the costs and charges of the said plaintiff by him about his suit in this behalf laid out and expended, and now here adjudged to the said plaintiff, and with his assent; which said damages, costs, and charges, in the whole, amount to the sum of two thousand four hundred and eighty-one dollars and fifty-four cents And the said defendant, William T. Pease, in mercy, &c.

Judgment signed on the fifth day of November, in the year of our Lord one thousand eight hundred and forty-five.

JNO. WINDER, *Clerk*.

Circuit court of the United States for the seventh circuit and district of Michigan, *ss:*

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true exemplification of the record of the judgment of said court in the case of William Dwight, plaintiff, against William T. Pease and Tarleton Jones, impleaded with John Chester, defendants.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at the city of Detroit, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States of America the seventieth.

[L. S.]

JNO. WINDER, *Clerk*.

UNITED STATES OF AMERICA, *ss*.

To William Dwight, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and district of Michigan, wherein William T. Pease is plaintiff, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-five.

UNITED STATES OF AMERICA:

The President of the United States of America, to the judges of the circuit court of the United States, for the seventh circuit and [L. S.] district of Michigan, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court before you, between William Dwight and William T. Pease, John Chester, and Tarleton Jones, a manifest error hath happened, to the great damage of said William T. Pease, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United [States,] together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the seventieth.

JNO. WINDER, *Clerk*.

It is hereby stipulated and agreed by and between the parties in this cause, by their respective attorneys, that the said cause shall be submitted to the Supreme Court, on the printed case and briefs hereto appended, the said defendant in error hereby waiving all exceptions of form as to the manner of certifying said cause, and the security required by the act of Congress in such case made and *provided*.

Detroit, January 9, 1846.

GEO. C. BATES,
Attorney for plaintiff in error.
JOY & PORTER,
For plaintiff.

Circuit court of the United States, for the seventh circuit and district of Michigan.

WILLIAM DWIGHT,
vs.
WILLIAM T. PEASE, impleaded with JOHN CHESTER & TARLETON JONES.

Case for the Supreme Court of the United States, from circuit court of the district of Michigan.

Pleas before the judges of the circuit court of the United States for the seventh circuit and district of Michigan, at the district court room in

the city of Detroit, in said district. Of the term of October, in the year of our Lord one thousand eight hundred and forty-five.

DISTRICT OF MICHIGAN, *to wit:*

William Dwight, plaintiff, puts in his place Joy & Porter, as his attorneys, against William T. Pease, John Chester, and Tarleton Jones, defendants in a plea of trespass on the case upon promises.

DISTRICT OF MICHIGAN, *to wit:*

The defendant William T. Pease puts in his place George C. Bates, and the defendant John Chester puts in his place Lewis Allen, as their attorneys at the suit of the said William Dwight, plaintiff, in the plea aforesaid.

According to the form of the statute in such case made and provided, a certain writ of summons issued out of and under the seal of the said circuit court of the United States, for the seventh circuit and district of Michigan, at the suit of the said William Dwight against the said Wiliam T. Pease, John Chester, and Tarleton Jones, of a plea of trespass on the case upon promises, which writ of summons is in the words and figures following, that is to say:

The summons is in the ordinary form.

And thereupon, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and forty-five, the said plaintiff William Dwight, by his attorneys aforesaid, comes into the court aforesaid, before the judges thereof, in pursuance of the statute and rules of said court, and files his *amended declaration* against the said defendants William T. Pease, John Chester, and Tarleton Jones, in the words and figures following, that is say:

DISTRICT OF MICHIGAN, *ss:*

William Dwight, who is a citizen of the State of Massachusetts, plaintiff in this suit, by Joy & Porter, his attorneys, complains of William T. Pease, John Chester, and Tarleton Jones, defendants in this suit, in a plea of trespass on the case on promises, &c., which said Pease and Chester have been duly summoned and are citizens of the State of Michigan, and which said Jones is a citizen of the State of Illinois, and as to whom the marshal has returned upon the summons that he is not to be found.

For that whereas one John Chester, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and thirty-seven, at Detroit, in said district, made his certain promissory note in writing, bearing date the same day and year aforesaid, and thereby then and there promised, two years from the date thereof, to pay to the order of Walter Chester and the said defendants, under the copartnership name and style of these said defendants, Pease, Chester & Co., one thousand five hundred dollars, for value received, at the Farmers and Mechanics' bank of Michigan, with interest; and then and there delivered the said promissory note to the defendants; who then and there using their copartnership name and style of Pease, Chester & Co.

endorsed said note, and delivered the same to the plaintiff; and the said plaintiff avers, that the said John Chester was one of the said persons using the name and style of Pease, Chester & Co., and that the name of the said Walter Chester was inserted in the said promissory note as one of the persons to whose order the said sum of money should be payable by the said John Chester, for the purpose of, and with the intention on the part of the said John Chester, of procuring the said Walter to endorse the said note for the accommodation and benefit of the said John Chester, and for no other purpose; that the said note was never delivered to the said Walter Chester, and that the said Walter Chester never had at any time any interest or property, or any rights therein, or to the money specified and mentioned therein.

That the said note was by the said John Chester delivered to the said Pease, Chester & Co. alone, who received the same and endorsed it solely, who waived the endorsement of the said Walter Chester, and having solely endorsed the same, delivered the said note, so endorsed as aforesaid, to the said plaintiff. And the said plaintiff avers that afterwards, and when the said promissory note became due and payable according to the tenor and effect thereof, to wit, on the fourth day of January, in the year eighteen hundred and thirty-nine, at the said Farmers and Mechanics' bank of Michigan, the said note was presented and shewn to and at the said bank for payment thereof, and payment thereof requested; but that neither the said John Chester, nor any other person, did or would pay the said sum of money therein specified, but then and there wholly neglected and refused to do so; of all which said several premises the said defendants then and there had due notice.

And the said defendant William T. Pease, impleaded as aforesaid, by George C. Bates, his attorney, comes and defends the wrong and injury, when, &c., and says, that the said first count of the said amended declaration, and the matters therein contained, in manner and form as the same are above stated and set forth in said first count, is not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same, and this he is ready to verify; wherefore, by reason of the insufficiency of the said first and second counts of said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him, the said defendant. And the said defendant, pursuant to the rules and practice of this court, states and shows the following grounds of demurrer to the said first count, viz:

First. Because it is not averred in said first count that Walter Chester, *one of the joint* payees of the said promissory note described in said counts, ever endorsed or delivered the same to the said plaintiff, or any other person whatever.

Second. For that said first count is in other respects informal, insufficient, and defective.

And the said plaintiffs say the said first count of said declaration is sufficient for him, the said plaintiff, to have and maintain his aforesaid

action against said defendant, and this he is ready to verify; wherefore he prays judgment, and that his damages may be awarded to him, &c., &c.

At which day, before the judges of the said court, came as well the said plaintiff as the said defendants, by their respective attorneys aforesaid, whereupon all and singular the premises aforesaid being seen, and by the said court here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the declaration aforesaid, and the matters therein contained, *are sufficient in law* for the said plaintiff, William Dwight, to maintain his aforesaid action thereof against the said William T. Pease.

Circuit court of the United States for the seventh circuit and district of Michigan.

WILLIAM T. PEASE, impleaded with JOHN CHESTER and TARLETON JONES, *adsm.* WILLIAM DWIGHT. } Brief of defendant's attorney on demurrer to first count of plaintiff's amended declaration.

This is an action brought by the plaintiff as the holder of a promissory note, made by John Chester, of Detroit, Michigan, payable to the order of *Walter Chester* and Pease, Chester & Co., which note was as follows:

Detroit, January 1, 1837.

Two years from date I promise to pay to the order of Walter Chester and Pease, Chester & Co., one thousand five hundred dollars, for value received, at the Farmers and Mechanics' bank of Michigan, with interest. (Signed,) JOHN CHESTER.

Endorsed by Pease, Chester & Co., but not by Walter Chester.

The first count of the declaration sets forth the particular circumstances under which the note was made and endorsed, and the demurrer of course admits them to be true. John Chester, the *maker* of the note, was one of the firm of Pease, Chester & Co.—he made the note with the intention of procuring the endorsement of Walter Chester and Pease, Chester & Co., as *accommodation endorsers* for his benefit. Walter Chester declined to endorse the note, and then John Chester endorsed his note with the copartnership name of Pease, Chester & Co., and delivered it to De Garmo Jones, who delivered it to the plaintiff.

The demurrer which was originally interposed to the 1st and 2d counts, (the second having been subsequently *nolle pros'd*) sets forth as the ground of demurrer that the first count does not set forth a right of action in the plaintiff, as there was no endorsement or transfer of the note by Walter Chester, one of the *joint payees thereof*, and that no right of action can be acquired to a promissory note, made payable to order of joint payees without the *endorsement* by them and each of them; that in no other manner can there be a legal transfer of such a *note*, or the cause of action thereon. This is the only point involved in the de-

cision of the court below, and which this court is now called upon to revise. The plaintiff claims to recover as the *holder of a negotiable note;* and such is the instrument declared on in the count under examination. He does not seek to recover on a special contract, but on a note, transferred and delivered by the *single* endorsement of one of the joint payees. (Does the 1st count show a right to recover as against the other joint endorsers?) He claims to recover, too, against William T. Pease, one of the firm of Pease, Chester & Co., whom he states were mere *accommodation* endorsers of John Chester. It is quite unnecessary to cite to this tribunal the general rule laid down in all the books: "If a bill or note be payable to *several* persons *not in partnership*, the right to transfer is *in all collectively*—not in any individually; and an endorsement by and in the name of one only, will *not* give the *endorsed* a right to sue."—*Baley on bills*, 49.

Chitty on bills, page 123, says: "If a bill has been made or transferred to several persons not in *partnership*, the right of transfer is *in all collectively*, and not in *any individually*." Carrick *vs.* Vickery, 2 Douglass' reports, 653, p. 134; Smith *vs.* Whiting, 9 Mass. Rep. 334; 7 Cowen, 126; 9 Greenleaf, 85. Story, in his volume on promissory notes, page 131, section 125, lays down the same rule in the following language: "If a note be made payable or endorsed to several persons not partners, as to A, B, and C, then the *transfer* can only be by a '*joint endorsement*' of *all of them*." In Story on bills, sec. 197, page 218, the same rule is again laid down in the following language: "If a bill be made payable or endorsed to several persons not partners, as to A, B, and C, then the transfer can only be by a '*joint endorsement*' of *all of them*."

Such is the rule established by all the elementary writers, and the decisions of the courts of England and this country, on the subject. It is not pretended, nor does the count demurred set forth, that Walter Chester was a partner of Pease, Chester & Co. *Such was not the fact*, and the pleadings show it. Of course this note could only be *transferred* or *assigned* to the plaintiff by the endorsement of both *Walter Chester* and *Pease, Chester & Co.*, the joint payees thereof.

Let us now examine briefly the only case cited by the attorneys of the plaintiff on the argument of this demurrer in the *court below*, the only case on which that decision can be sustained, and the court will see by a glance at the facts that it has no real application to the present case, that it contains no exception whatever to the general rule cited from the authors above referred to.

What are the facts of that case, as set forth in 4 Carrington & Payne's Reports, 466; Leaf and others *vs.* Gibbs. That was an action brought by the *payee* of two promissory notes made by the defendant and two ladies, named Gibbs and White, which were given in payment of an account due from Gibbs and White. The defendant signed the notes, with the understanding *at the time* of his signature that his mother should sign them with him, as a *joint* and *several promissor*, but *she refused* to do so. The notes were, so far as we can discover from the report of the case, joint and *several notes*, to which the defendant had

placed his name. On the trial, the plaintiffs and the payee proved that the defendant had placed his name there with the understanding that his mother was to unite as a maker. The defendant was liable on the face of the notes by their tenor as a *joint* and *several maker*. He sought to establish as a defence, that at the time of the making he agreed to sign with his mother, a fact of course known to the *payees;* and the court properly charged the jury, that if they were satisfied from the evidence adduced that he had not waived, by his own conduct, the *joint* and *several* signatures of his mother, they must find for him, the defendant. In this case we insist there is *no* legal *liability of the defendant* on the note set forth in the declaration, without the joint endorsement of Walter Chester, which was never obtained. There can be no legal liability, as endorser of the note set forth in this case, without the joint endorsement of *all the payees of it*. There can be no legal transfer to the plaintiff, or any one else, of the note set forth in the first count, unless it is done by the joint endorsement of *Walter Chester* and *Pease, Chester & Co*. In the case of Leaf and Gibbs, the defendant was liable on the face of the note itself; here the *defendant is not;* there he set up facts *dehors* the note, to show that he was discharged; here we rely on the face of the note itself. The two cases are as entirely dissimilar in the facts set forth as they are in the principles of law which govern them. The case cited in no particular sustains the principles contended for by the plaintiff's counsel in the present case.

GEORGE. C. BATES,
Attorney for defendant Pease.

CIRCUIT COURT OF THE UNITED STATES, *district of Michigan:*

WILLIAM DWIGHT,
vs.
WILLIAM T. PEASE and als.

The declaration in this cause is against the defendants as endorsers of a promissory note made by John Chester, payable to the order of Walter Chester and the defendants, and avers that the note was made by John Chester, payable to the order of Walter Chester and the defendants, with the intention of procuring Walter Chester *to endorse the same as an accommodation endorser;* that the said note never was *delivered to said Walter Chester;* that he had *no property* therein; had *no interest* in the moneys specified therein, and *was in no way whatever interested in the said note;* but that the said note was delivered to the said *defendants alone*, who endorsed and delivered the same to the said plaintiff, and expressly *waived* the endorsement of the said Walter Chester. The presentment and notice is also alleged in the usual form.

The statement of facts made by Mr. Bates in his brief, as to Mr. Chester endorsing the copartnership name of the defendants and transferring the note to Jones, and that Walter Chester *declined* to endorse the note, are out of the declaration, and are *not true*.

The facts alleged in the declaration are admitted to be true by the demurrer, and are unquestionably true.

The question then is, whether upon the facts alleged and *admitted to be true*, the plaintiff is entitled to recover; and of this we think there can be no question.

It strikes us that the question is simply this, viz: Where a promissory note has been made payable to four individuals, with the intention to procure all to endorse it, and three actually conclude to endorse it without the other, can they strike out the name of the other payee, and whose name was inserted only for the purpose of procuring him to endorse for accommodation? This is the legal effect of endorsing and delivering the note without his joint endorsement, and an express waiver of his endorsement at the time, which is tantamount to an agreement by the three to become liable without him. The making of a promissory note is not the making of a contract, nor is an endorsement for accommodation a contract; it is the delivery which gives effect to all; 'tis then that the contract becomes operative. Now, what was the contract at the time of delivery to the plaintiff? Chester had made his note payable to the order of Walter Chester and the defendants, with the intent to procure Walter to endorse solely and only for his accommodation. The defendants, among whom was John Chester, the maker of the note, finding some difficulty in procuring Walter's endorsement, conclude to forego it, he having no interest whatever in the matter, and endorse it themselves without him; the plaintiff agrees to take the note with their endorsement alone. Now, up to this time there is surely no contract at all in virtue of the paper; but now it is delivered and accepted upon the full understanding by all parties that Walter Chester should be no party to the security, although in the hurry of a commercial transaction the pen was not drawn across his name before delivery.

Now, was he ever in any way a party to the note, either as payee or endorser? He had no interest in it which would entitle him to have it delivered to him. It was not delivered to him, or to another for his benefit, *which alone would make him a party to it*. It is not by delivery then that he is a party to it. He did not endorse it, which would have made him a party. In legal effect, therefore, *he never did become a party to it;* and the transaction, so far as he is concerned, is precisely the same as if his name had never appeared upon the paper, or had been struck out at the time of delivery.

It was delivered to defendants, which made them parties to it. It was by them endorsed, and with a waiver of the endorsement of Walter Chester. It was accepted with a waiver. What was the contract, then, which took effect?

Let it be remembered that the maker of this note is one of the firm of Pease, Chester & Co., the endorsers—that it was payable by one of the firm to the order of the copartnership, and another person whose name was to be procured *to strengthen the note*—that it never passed from the hands of the maker, and therefore never took effect till the maker, together with his copartners, endorsed and delivered it, and waived the endorsement of the other intended surety.

How can it be pretended that Walter Chester was ever a party in any

way to this note; and how can the doctrine of the cases, cited on the other side, which say that all parties to a note as payees must endorse it in order to transfer it? It is undoubtedly true that parties jointly interested in a promissory note as payees, holding property in the note, must join in the endorsement to pass the property in the note. Two cannot transfer the property of *three*. All this is clear and unquestionable. But here Walter Chester never was in law a party, and never had any property in the note in fact, as admitted by the defendants themselves in their demurrer.

In this view of the facts, it is similar to the case of a bond, reciting in the body that one person is bound as principal and four others as sureties, evincing an intention at the time of writing the bond of procuring four sureties. The bond in fact is signed by only three sureties, and by them is executed and delivered with the knowledge that the other does not execute it, and whose execution of it by the others is waived, but whose name is through inadvertence not struck out of the instrument. This point has been decided. *See Duncan vs. U. S.*, 7 *Peters*, 443.

It is the same as if the note had read—We, John Chester as principal, and Walter Chester and Pease, Chester & Co. as sureties, agree to pay to the order of William Dwight, &c., and the parties had signed it except Walter, and delivered it, waiving his signature and consenting to become bound without him. There can be no doubt in such a case. *See Leaf & als. vs. Gibbs*, 4 *Car. & Payne*, 466; *same case*, 19; *English C. L. R.* 475.

In the case before the court, it having been the understanding clearly of all parties that Walter's signature or endorsement should be waived, it was competent for Dwight to strike his name out of the body of the note, as being *no party* to it; and in legal effect he is no more a party to the note than if his name had been struck out at the time of delivery. His name has been permitted to remain, though legally there never was any contract with him; and we may recover upon the facts, as well as if we had struck out his name, and declared upon the note as payable to Pease, Chester & Co. alone, which in legal effect was the case.

But we may set out the instrument in the declaration, either as it is written, and let the court say what the legal effect is, or we may set it out according to its legal effect.

This, too, is an action against the men who endorse and deliver the note, and waive the endorsement of the other party. They deliver the note in its present shape as a good contract, and now resist a suit upon the ground that there is no transfer. They do not deny the contract, but say we can't sue the maker, because Walter Chester has not endorsed. We say they have contracted, and therefore we sue them. They ought to be, if they are not, estopped from denying our right to maintain an action against them.

JOY & PORTER,
For plaintiff.

Filed 6th February, 1846.